LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
JAN 19 1971
E. ROBERT SEAVER, CLERK

SUPREME COURT OF THE UNITED STATES

October term, 1970

No. 1251

SOUTHLAND INCORPORATED
Petitioner in Certiorari

v.

COX ENTERPRISES INC. AND ATLANTA NEWSPAPERS INC.
Defendants in Certiorari

Petition of Southland, Incorporated for writ of certiorari to the Supreme Court of Georgia.

G. Seals Aiken
Attorney for Petitioner
1409-10 Candler Building
Atlanta, Georgia 30303

INDEX

Page

Acknowledgment of Service----------46
Conclusion----------45
Constitutional Principles on Which Petitioner relies for allowance of writ:
1. Access to Courts----------27 29
2. Arbitrary and Capricious Decisions----5 23, 45
3. Contract----------29 31
4. Dual Jurisdiction---------- 5 10, 24, 29
5. Due Process---------- 4 7,8,10,11,13,14,15,16,19,20,28,42,43, 44,45
6. Eminent Domain----------22
7. Equal Protection ---------- 4 6, 10,11,12,15,21,27,28,29,37,38, 44,45
8. Evidence----------35
9. Full and Fair Trial---------- 5 6,9,23,27,29
10. Full Faith and Credit----------29
11. Ingress and Egress---------- 6 8,11,28
12. Judicial Question----------21 29,30
13. Limitations on Use of Highways--------18
14. Police Power----------18 20,22,23
15. Privileges and Immunities----------29 31
16. Property rights----------20 21,22,28,37,38,40,42,43,44,45
17. Public Interest----------33 39,41,43,45
18. Public Nuisance----------12 13,16,17,18,19,20,41
19. Retroactive Law---------- 2 5,30,31,32,33
20. Right to Review---------- 5

(Continued at Back)

SUPREME COURT OF THE UNITED STATES

October term, 1970

No. _____

SOUTHLAND INCORPORATED
Petitioner in Certiorari

v.

COX ENTERPRISES INC AND ATLANTA NEWSPAPERS INC.
Defendants in Certiorari

Petition of Southland Incorporated for writ of certiorari to the Supreme Court of Georgia, and direct and concise argument amplifying the reasons relied on for allowance of the writ.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Southland Incorporated, a Georgia corporation, files this its petition for writ of certiorari to the Supreme Court of Georgia

for the purpose of having reviewed, corrected and reversed the decisions and judgments of that Court of October 8, 1970 reversing the judgment of the Superior Court of Fulton County, Georgia in Civil Action No. B-48870 relative to a Motion to Dismiss and in dismissing an appeal of petitioner from a prior unfavorable judgment in the same court and in the same cause.

Case numbers assigned by the Supreme Court of Georgia were 25917 for the original appeal of Petitioner and 26026 for the appeal of opposite parties, based on an order following a special hearing on a Motion to Dismiss.

The last appeal filed (26026) was held to control the earlier case (25917).

Petitioner filed Motions for Rehearing in both appeals, which motions were denied October 22, 1970.

The original trial and the special hearing on the motion to dismiss the appeal were reported.

This petition for writ of certiorari seeks a review of the decisions and judgments of

the Supreme Court of Georgia in both cases, 25917 and 26026.

CONCISE STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THE COURT IS INVOKED.

The decisions of the Supreme Court of Georgia sought to be reviewed were rendered by that Court on October 8, 1970. They appear in 226 Georgia.

The motions of Petitioner for rehearing were denied October 22, 1970 and entered the same date.

The statutory provision believed to confer on this Court jurisdiction to review the judgments in question by writ of certiorari is Section 1257 (3) of Title 28 U.S.C.A. reading in part as follows:

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed in the Supreme Court as follows: **(3) By writ of certiorari, **where any title, right, privilege or immunity is specially set up or claimed under the

Constitution ** of ** the United States".

In addition, the Georgia courts have so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of the Supreme Court's power of supervision.

THE QUESTIONS PRESENTED FOR REVIEW

1. Will a newspaper publishing company be permitted to relocate one block of a busy downtown thoroughfare in the City of Atlanta for the newspapers' private convenience when that privilege has been denied all others, including railroads which are public servants?

2. Will a newspaper company be permitted to take for its private use as a building site 20,000 square feet of a busy and necessary thoroughfare when the courts have universally held that public streets cannot be taken for private uses?

3. Will a trial court be permitted to re-

fuse to grant time for hearing arguments dealing with grave and substantial violations of the U.S. Constitution and to arbitrarily and capriciously hand down a decision ignoring said Constitutional issues?

4. Can a court reporter's loss of all the documentary evidence in a case, delaying an appeal 13 months, deprive the Petitioner of a review of its cause before the State's highest tribunal?

5. Shall both the appellate courts and the trial courts retain dual jurisdiction over appeals after they have been docketed in the appellate court?

6. Shall the Supreme Court of Georgia avoid considering and deciding grave Constitutional questions by merely holding that the instant case is "controlled" by another case dealing with different matters?

7. Can a case be said to "control" another case which was before the appellate Court three months earlier but on which a decision

had been delayed?

8. Will a trial court and an appellate court be condoned in accepting negative, self-contradictory, vague, evasive and equivocal testimony of Defendants as in preference to direct and positive testimony as given by Petitioner?

9. Shall a party be deprived of ingress and egress, unimpeded and unobstructed, to and from its place of business by way of the public streets leading thereto?

10. Does the expenditure of large sums of money justify the Defendants in obstructing public streets with a permanent building?

11. Did the Defendants erect the building in the streets at their peril while injunction proceedings were before the courts?

12. Whether the trial court failed and refused to decide the merits of the case as shown by the evidence and whether this position was sustained and condoned by the Supreme Court of Georgia.

13. Is relief from obstructed streets limited to action by the municipality or abutting landowners?

14. Does a municipality have authority to obstruct streets permanently for private benefit of abutting owners?

15. Do the courts have authority to intervene in the relocation of a public street for private convenience?

CONCISE STATEMENT OF THE CASE CONTAINING THE FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED AND ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT OF CERTIORARI

Cox Enterprises Inc. and its subsidiary Atlanta Newspapers Inc. are building a multistory permanent building at Fairlie Street NW and Wall Street NW in the center of Atlanta.

The building encroaches to the middle line of both streets. In the Case of Fairlie Street the newspaper company has promised to relocate one block of the street eastward 12 feet to relieve the encroachment. The newspaper owns both sides of the street.

In the case of the greatest encroachment, half of 50-foot Hall street for a distance of 810 feet, the encroachment cannot be relieved by relocating the street because the Federal Reserve Bank owns the other side of the street.

The Federal Reserve Bank has announced that it is "cooperating" with the newspaper company in its expansion program. Jack Tarver, president of the two newspaper corporations, was also chairman of the board of the Federal Reserve Bank at the time of the original encroachment.

Southland Incorporated has its place of business on Forsyth Street 50 yards from the encroachment area, its access is obstructed and it has suffered loss of business. Forsyth Street is a two-level street and the portion of the property of Southland Incorporated affected is on the underground level, where Forsyth Street forms a cul-de-sac. Petitioner's only direct access to the underground level is over Fairlie and Hall Streets, which are

encroached and obstructed.

Both streets have been obstructed for two years and are expected to be obstructed by construction several years more. Even after construction is completed, Hall Street, principal access of Petitioner, will be obstructed permanently by the reduction of the width of the street to the width of an alley.

When access of Southland, Incorporated was first obstructed by pouring of concrete foundations, Petitioner sought injunctive relief in Fulton Superior Court, (B-66470) which was denied. Petitioner appealed to the Supreme Court of Georgia where its case was docketed May 12, 1970. (25917)

On May 13, 1970 the trial court heard a motion by Defendants that the appeal of Petitioner at that time in the appellate court be dismissed. The trial court dismissed the motion but passed an order saying the delay in the appeal of Petitioner was caused by Petitioner.

Defendants appealed to the Supreme Court of Georgia from that dismissal. The Supreme Court of

Georgia on October 8, 1970 handed down simultaneous decisions reversing the trial court on the dismissal of the motion to dismiss the appeal and holding that 26026 controlled the original appeal of Petitioner (25917). This had the effect of denying Petitioner a review of the case.

QUESTION NO. 1.

In the case of Coker et al v. Atlanta, K. & N. Ry. Co. 123 Ga 483, 51 SE 481, two merchants in the vicinity (not abutting owners) sought an injunction against the railway company and the City of Atlanta to prevent them from relocating a street for the convenience of the railroad.

The Supreme Court of Georgia, reversing the trial court, gave the plaintiffs the relief they sought and the relocation of the street was denied.

In like circumstances, this same Supreme Court of Georgia has denied Petitioner similar relief in violation of its constitutional rights and has permitted a newspaper company and the City of Atlanta to relocate Fairlie Street NW, a busy

thoroughfare, for the private accommodation of the newspaper company's new building.

To deceive the public the project has been titled a "widening and improvement" project when the actual "widening" is six inches.

The project has destroyed Petitioner's only direct access to the streets of the city for the last two years, and indications are that construction will continue for several years more.

This Court has applied the rule of due process to grade crossings: 98 L ed 62; Atchison T. and S. F. Ry Co. v. Public Utilities Com., 346 U.S. 346; 98 L ed 51; 74 S Ct 92.

QUESTION NO. 2.

In Harbuck v. Richland Box Co. et al 204 Ga. 352 the Supreme Court of Georgia held invalid an ordinance which granted a private firm the exclusive use of a part of a public street.

When Petitioner sought relief in the same court for a similar nuisance it was given quite different treatment and was refused relief.

Petitioner insists that it be given equal treatment in like circumstances, as guaranteed by the Federal Constitution.

There are other instances of like circumstances in which aggrieved persons have been given treatment unlike that given this Petitioner by the same court.

In Rider v. Porter 147 Ga. 760, 95 SE 284 it was held that any permanent structure in a road which materially interfered with travel is a nuisance per se, and that any obstruction permanent in nature or continuously maintained, which interferes with the free use of the road by the public, is a public nuisance and it is immaterial that space may be left on either side of obstruction for the passage of the public. The public have a right to the unobstructed use of the whole road as it was acquired by the county or city.

In Marietta Chair Co. v. Henderson 121 Ga. 399; 407 SE 312; 104 Am St 156; 2 Ann Cas 83 it was held that neither the General Assembly, nor a subordinate public corporation acting under its authority, can

vacate a public street for the benefit of a private person or corporation.

In City Council of Augusta v. Reynolds 122 Ga 754; 50 SE 998; 106 Am St 147, it was said that any permanent structure in a street which materially interferes with travel thereon is a public nuisance, and that the public is entitled to the whole of every street against one who places obstructions therein.

During the trial the City of Atlanta contended that the streets and turning courts belonged to the city and the city could make any use of them that the city desired, and the trial court supported this position and was condoned by the appellate court.

This is a Constitutional issue, as is shown by Arkansas-Louisiana Gas Co. v. Parker Oil Co., which reads:

"Statute authorizing police juries and municipal corporations to revoke and set aside dedications of roads, streets and alleyways, when abandoned or no longer needed for public use, is not invalid as

authorizing the taking of property of dedicator without due process by providing that ownership shall revert to the then present owners of land contiguous to such road, street or alley, SINCE LAND DEDICATED TO PUBLIC USE UNDER STATUTE VESTS THE TITLE TO THE PROPERTY IN THE PUBLIC AS AGAINST THE CONTENTION THAT THE PUBLIC HAD BUT A SERVITUDE on the streets and alleys which on abandonment reverted to the dedicator".

The Supreme Court of Georgia, which in the instant case is permitting a newspaper company to appropriate to its private use 20,000 square feet of a busy thoroughfare, in an early case (Daly V. Georgia S. & F.R. Railroad Co., 80 Ga. 793, 7 SE 146) held that a statute conferring power upon municipal corporations to permit and sanction encroachments on their streets for a reasonable compensation in money did not justify a grant to a railroad company of an extensive portion of a street.

If a railroad, which is a public servant, cannot take over a portion of a street EVEN FOR MONEY, how much less can a newspaper company take over half

of a thoroughfare WITHOUT payment.

Only consideration the newspaper company has given was favorable publicity for a former mayor, Ivan Allen, Jr., to make him appear to be a great mayor. Thus, the mayor of an important city has sold the public's right to use of its streets for a mess of publicity.

The courts which permitted the newspaper company to take over the streets, but refused the same privilege to the railroad, dispensed unequal justice in violation of the Federal Constitution.

No person has the right to use the streets permanently for private purposes. Silverman v. Usen 128 Me 349; 147 A 421; O'Hanlin v. Carter Oil Co. 54 W Va 510. 46 SE 656.

A municipality cannot, under a delegated power to permit an obstruction or encroachment upon its streets or sidewalks, authorize any person so to appropriate a street or sidewalk or any part of it as to exclude the general public from its free and unobstructed use. Acme Realty Co. v. Schinasi 215 NY 495, 109 NE 577; Stillwater v. Lovell, 159

Okla. 214, 15 P 2d 12; Arbenz v. Wheeling and H. R. Co., 33 W Va 1, 10 SE 14.

It is one of the fundamental principles of the common law that no private interference with or purpresture in or upon the public highway will be tolerated. Clawson v. Central Hudson Gas & Elec Corp 298 NY 291; 83 NE 2d 124.

There is general agreement upon the proposition that any permanent, fixed, or stationary object or impediment, as distinguished from a mere temporary obstruction incidental to a lawful use of the way, which unreasonably and unnecessarily interferes with public travel, or which endangers the safety of travelers, constitutes a public nuisance per se. Richardson v. Boston 19 How (US) 263; 16 L ed 639; Birmingham v. Hood McPherson Realty Co. 233 Ala 352, 172 So 114; 108 ALR 1140; Strong v. Sullivan 180 Cal 331, 181 P 59, 4 ALR 343; Michelson v. Dwyer 158 Neb 427, 63 NW 2d 513; Graves v. Shattuck 35 NH 257, Opdycke v. Public Ser. R. Co. 78 NJL 576, 76 A 1032; Stern v. International R Co. 220 NY 284, 115 NE 759, 2 ALR 487; Brooks v. Henrietta Mills Co.

182 NC 719, 110 SE 96; McGowan v. Burns 172 Or 63, 137 P 2d 994; Breisch v. Locust Mountain Coal Co 267 Pa 546, 110 A 242, 9 ALR 1330; Memphis Street R Co v. Rapid Transit Co 133 Tenn 99, 179 SW 635; McFarlane v. Niagara Falls 247 NY 340, 160 NE 391, 57 ALR 1; Dygert v. Schenck 23 Wend (NY) 446, Price v. Travis 149 Va 536, 140 SE 644, 56 ALR 209; Higginbotham v. Kearse, 11 W Va 264, 161 SE 37, 77 ALR 1110.

A building or other similar structure erected on or extending into a street or highway, without legal right or public authorization, or for an unauthorized purpose, is an unlawful obstruction thereof or encroachment thereon, constituting a public nuisance:

First Nat. Bank v. Tyson 133 Ala 459, 32 So 144; Daly v. Georgia S. & F. R. Co 80 Ga 793, 7 SE 146; People ex rel McCormick v. Western Cold Storage Co 287 111 612, 123 NE 43, 11 ALR 437; O'Brien v. Central Iron & Steel Co 158 Ind 218, 63 NE 302; Cowin v. Waterloo 237 Iowa 302, 21 NW 2d 705, 163 ALR 1327; Valparaiso v. Bozarth 153 Ind 536, 28 NE

418; Lewis v. Pingree Nat. Bank 47 Utah 35, 151 P 558; Anger v. Al G. Barnes Amusement Co 183 Wis 272, 197 NW 707.

Limitations or the uses to which a highway may be put have been laid down by this Court in interpreting the 14th Amendment. These limitations have been extended to vehicles for which the highways were designed. The limitations certainly would prohibit a permanent private building as an obstruction in the street.

"The power of Legislature to regulate highways and their use is not exercisable for the purpose of conferring upon a private person a special or exclusive right in use of highways for private gain, but control or conditioning of use of highway by a business must be done as a safety measure", Hertz Drivurself Stations v. Siggins 58 A 2d 464; 359 Penn 25; 7 ALR 2d 438.

"The police power of a State includes everything essential to public safety or health and justifies the destruction or abatement by summary proceedings of whatever may be regarded as a public nuisance."

Aguiar & Bello v. Brock D.C. Cal. 1938; 24 F Supp 692.

The building erected by the Defendants encroaching to the center of two thoroughfares has been shown to be a public nuisance and should be removed.

"Lessee of railroad right of way was not deprived of property without due process by decree abating nuisance and requiring removal of buildings", City of Sturgeon v. Wabash Ry Co 17 SW 2d 616; 223 Mo. App 633.

If a city can abate a nuisance by removing buildings from a railway right of way, much greater is the duty to remove buildings which obstruct a public street as in the instant case. In Petitioner's case officials of the City of Atlanta are in collusion with the Defendant newspapers in the taking of the street for a private building site.

"Destruction of bridge pier illegally encroaching on street does not deny due process", City of Shreveport v. Kansas City, S. & G. Ry. Co., 120 So. 290; 167 La 711.

If a railroad can be compelled to destroy a bridge pier encroaching on a street, a newspaper

company can be required to remove its building from the center line of a street. The railroad decision is based on the 14th Amendment.

So generally accepted under law is the principle that the public streets may not be taken for a private purpose that the West publications in their indexing system have set up a separate heading Key 669 entitled: "Streets may not be permanently used for private purposes".

"...There is no vested right to the use of property in such a manner as to constitute a nuisance, an injury to the public health or morals, or an injury to the property rights of others": Young v. Mall Inv. Co 55 ALR 461; Cowin v. City of Waterloo 163 ALR 1327 ; State v. New England Furniture Co. 52 LRA ns 932; Hathorn v. Natural Carbonic Gas Co. 23 LRA ns 436, 12 Ann Cas 989; Anderson-Prichard Oil Corp. v. Corporation Commission, 342 U.S. 938.

In the instant case the Defendants are using the public street in a private way to constitute a public and private nuisance, an injury to the

safety of the public, and a special injury to the property rights of Petitioner.

40 CJS Highways 218 (3) "Statute authorized boards of supervisors to enact special legislation to protect roads and bridges from encroachment or obstruction or from any improper or exceptionally injurious use is valid": Standard Oil Co v. Commonwealth 109 SE 316; 131 Virginia 830.

"The word 'obstruct' does not necessarily mean render impassable, when used of a public way": Overhouser v. American Cereal Co. 92 NW 74; 118 Iowa 417. In the instant case the Defendants pleaded that the public had plenty of room to pass.

"Public use determines taxing power of States. Exercise of taxing power for merely private purposes is beyond authority of States." Loan Assoc. v. Topeka 20 Wall, 655. On this theory the State has no authority to allow its highways to be used for purely private purposes, as in the instant case.

This Court has held that whether a use is public or private is ultimately a judicial question: Millheim v. Moffat Tunnel Dist. 262 U.S. 710. This

was one of the issues sought to be decided by the trial court and the Supreme Court of Georgia. Both refused to make the decision. There can be little doubt that using a street for the building site of a private plant is a private use.

The taking of a street for a private purpose is a sort of eminent domain in reverse. Under eminent domain Constitutional provisions protect private parties from losing their property to public taking. Under law it much more urgent that the public be protected from private taking of public property as in the instant case.

This Court has prohibited the taking of a street for a private purpose: Chicago, St. Paul M. & O. Ry v. Holmberg 282 U.S. 162.

This Court has decided a case dealing with toll roads: Norfolk Turnpike Co. v. Virginia 225 U.S. 264.

This Court has decided cases dealing with load limits on vehicles using the highways: Sproles v. Binford 286 U.S. 374; and with advertising on trucks: Ry. Express Co. v. New York 336 U.S. 106.

This Court has regulated driver licenses in the premise that any appropriate means to protect other highway users in consonant with due process: Reitz v. Mealey 314 U.S. 33; Kesler v. Dept. of Pub. Safety 369 U.S. 153. Under the same premise it would appear that no person may obstruct a highway and such obstruction may be removed, to protect other highway users.

Police power extends to what is for the greatest welfare of the State. Reduction Co. v. Sanitary Works 199 U.S. 306,318. Police power embraces health, safety and morals.

QUESTION NO. 3

During the hearing of a motion to dismiss Petitioner's appeal in the trial court May 13, 1970 Constitutional questions arose and Petitioner prayed the court to continue the hearing until these grave issues could be researched.

The trial court denied the continuance and terminated the hearing arbitrarily but agreed to withhold judgment a few days to allow briefs.

On May 16, 1970 Petitioner offered its brief dealing with Constitutional questions, principally legality of Ga. Code Section 6-809 (b) which permits a trial court to retain dual jurisdiction in cases docketed in the appellate courts.

This Court is requested to examine this brief and to declare unconstitutional these provisions which have denied Petitioner a review of its cause.

Obviously the trial court did not read the brief, or if it did, the trial court did not give weight to the contentions thereof.

QUESTION NO. 4.

At the close of the trial in the lower court on April 4, 1969, the Court Reporter misplaced all of the documentary evidence (258 pages of exhibits, including affidavits, charts, photographs, plats, etc.) and did not find it until April 24, 1970, nearly 13 months later, thus delaying the preparation and filing of the transcript of the evidence necessary to be transmitted with Petitioner's appeal to the Supreme Court of Georgia. This is

the uncontroverted evidence in the record. Despite this uncontradicted evidence, the lower court, and the Supreme Court of Georgia in deciding Case No. 26026, stated that the delay was inexcusable and was caused by the Plaintiff. (Petitioner) At no time was the Plaintiff in custody or control of the missing evidence, and at no time was care of the evidence the responsibility of the Plaintiff.

When a court reporter "loses" or misplaces all the documentary evidence in a case and thus delays an appeal thirteen months during which the defendants are able to bring to near completion a building which the suit seeks to enjoin it would be a miscarriage of justice to hold that the delay was caused by Petitioner.

Southland, Incorporated, Petitioner, performed all of its responsibilities in the case when it filed timely notice of appeal, ordered the transcript and evidence prepared by the reporter, paid him in advance, paid all costs promptly, diligently sought and obtained proper extensions of time, and filed and transmitted the record, transcript and evidence

to the appellate court within the time allowed by the last extension.

Dereliction of duty and irresponsibility in caring for evidence on the part of court reporters seldom appear in Georgia case law, but we have found the circumstances in the present case duplicated in cases cited in several other jurisdictions. The present case is the only case we have been able to find in any jurisdiction in which a litigant has been denied a review in an appellate court by reason of the negligence of a reporter.

In Indianapolis Life Insurance Co. v. Lundquist, 53 N.E. 2d 338, 222 Ind. 359, it was held:

"9. Official court reporters are an arm of the court, with duty of preserving a record of the evidence, and a failure to make such record available is a failure of the court which entitles injured party to equitable relief.

"11. Where reporter's notes and exhibits were lost beyond recovery through no fault of appealing defendant, and it would be impossible to procure a bill of exceptions without them, defendant was

entitled to a new trial unless parties could agree on bill of exceptions."

"The equal protection clause requires that once a State establishes avenues of appellate review, those avenues be kept free of unreasoned distinctions that can only impede open and equal access to the courts": Am Jr 2d Const. Law 539. Rinaldi v. Yeager, 384 U.S. 305; 86 S Ct. 1497; 16 L ed 2d 577; Williams v. Oklahoma City 395 U.S. 458; 89 S. Ct. 1818; 23 L ed 2d 440; North Carolina v. Pearce 395 U.S. 711; 89 S. Ct. 2072; 23 L ed 2d 656.

When the trial court and the appellate court denied Petitioner a review in the State's highest tribunal supposedly because of a stale appeal, both acted in violation of Ga. Code 2-3705 (Constitutional provision) which reads:

"**No writ of error shall be dismissed because of delay in transmission of the bill of exception and the copy of the record, or either of them, resulting from the default of the clerk or other cause unless it shall appear that the plaintiff in error or his counsel caused such delay**".

The judgment of the Supreme Court of Georgia deprives Plaintiff of its property consisting of its constitutional right of ingress and egress, unimpeded and unobstructed, to and from its place of business by way of the public streets leading thereto, without Due Process of Law and without Equal Protection of the Law in violation of Article I, Section I, Paragraphs I, II, III, IV, and XXIII, and Article VI, Section II, Paragraph IV of the Georgia Constitution; and Amendments V, IV, and X of the U. S. Constitution as applied to the States by Section I of Amendment XIV thereof, by depriving it of the applicable and controlling law applied to other persons and corporations in like circumstances and similar situations, in the foregoing particulars.

The dismissal of Petitioner's appeal by the Supreme Court of Georgia deprived it of its property without due process of law and without equal protection of the law in violation of Article I, Section I, Paragraphs II, III, and IV of the Georgia Constitution and Section I of Amendment XIV of the U. S. Constitution as applied to the States, by depriving

it of its right under the said provisions of the Georgia and U. S. Constitutions to a review of the erroneous judgment of the trial court granted to other persons in like circumstances and similar situations.

"The power of a State to determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard in them, and to deny access to its courts, in the exercise of its right to regulate practice and procedure, as also subject to restrictions imposed by the contract, full faith and credit, and privileges and immunities clauses of the Federal Constitution": Angel v. Bullington 330 U. S. 183. (Emphasis added)

The principle of separation of powers is violated by Georgia Code Sections which undertake to lay down judicial rules. Administration of resulting dual jurisdiction of the courts has deprived Petitioner of its right to review in the State's highest court.

The Supreme Court of Georgia should be reversed in its affirmation of these statutes.

QUESTION NO. 6.

Petitioner is entitled to a decision on the points raised in its appeal. In the case of Moody and Wife vs. Davis, 10 Ga. 410-411, it was held in part: "The beautiful theory of a trial is this: Both sides are represented by counsel, that their rights may be settled, not by art or chicane or the tricks of the orator, but ACCORDING TO THE LAW. It is therefore the duty of counsel to present to the Court the points which he conceives are in favor of his client; and it is his right to be heard in argument to sustain them; and WHEN PRESENTED, IT IS THE DUTY OF THE COURT TO PASS UPON THEM, IF THEY GROW OUT OF THE CASE * * * If he declines to pass upon a principle thus moved, and it springs out of the case, such declining is error" * *

QUESTION NO. 7.

Judicial decisions may operate precisely like ex post facto laws which are forbidden by Art 1, Sec. 10 of the Federal Constitution, this Court has held in Bouie v. Columbia 387 U.S. 347; 84S. Ct 1647;

12 L ed 2d 894, petitioner contends it is a violation of a well established principle of law and justice as well as a violation of both the Georgia and U. S. Constitutions to apply a law or decision retroactively. Article I, Section III, Paragraph II of the Georgia Constitution expressly provides: "No Bill of Attainder, ex post facto law, retroactive law, or law impairing the obligation of contracts, or making irrevocable grant of special privileges or immunities, shall be passed." (Ga. Code Sec. 2-302). Article I, Section IX, paragraph 3 of the U. S. Constitution provides that "No bill of attainder or ex post facto law shall be passed," (Ga. Code Sec. 2-302). Article I, Section IX, paragraph 3 of the U. S. Constitution provides that "No bill of attainder or ex post facto law shall be passed," and Article I, Section 10 of the U. S. Constitution provides in part: "No State shall * * * pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility." These provisions of the U. S. Constitution are applicable to the States under

Section I of Amendment XIV thereof.

U. S. Constitution, Section 9, Article 1 provides: "No bill of attainder or ex post facto law shall be passed". Similar provision is in Section 10.

The Supreme Court of Georgia violated this provision when it held that the appeal of Petitioner (25917) was controlled by 26026, filed three months later.

"The bill of attainder clause of Article 1 Sec. 9 Clause 3 of the Federal Constitution and the principle of separation of powers do not protect states but only individual persons and private groups", South Carolina v. Katzenbach 383 U.S. 301; 86 S. Ct. 803; 15 L ed 2d 769.

The judgment of the Supreme Court of Georgia that, "This case is controlled by Cox Enterprises, Inc. Et al v. Southland, Incorporated, 226 Ga., (Case No. 26026) this day decided," and "Appeal dismissed," is without foundation in fact or law and unsupported by any authority whatever. Nowhere have we been able to find an instance in which a later case controls an older case. Nowhere have we been

able to find another instance in which the alleged controlling case dealt with matter entirely different from that of the case allegedly controlled.

Case No. 26026 which the appellate court states controls case no. 25917, deals with one subject and one subject only, namely, alleged staleness of appeal. The record in this case, No. 25917, presents voluminous evidence of fact, many questions of law, and questions which must be decided in the public interest and in justice to Plaintiff. None of these matters is even touched upon in the so-called controlling case no. 26026.

The Supreme Court of Georgia in 1866 laid down the ground rules for controlling cases. In Gray vs. Gray, 34 Ga. 499, it held: "A decision of this court WHEN IN POINT, is conclusive authority in SUBSEQUENT CASES." Since that time the appellate court has consistently held in hundreds of cases the facts or the questions propounded must be the same in the controlling case and the case controlled. The decision of the appellate court in case no. 25917 does not meet this test.

In 1911 the Georgia Supreme Court held that former decisions UNDER THE SAME FACTS were controlling. Giddens vs. Lewis, 137 Ga. 22, 72 S.E. 412. The Georgia Court of Appeals has consistently followed the same principle as in Central of Ga. Ry. Co. vs. Hartley, 25 Ga. App. 120, 103 S.E. 262, in which it held that the case controlled NEARLY EVERY PARTICULAR in a suit by another plaintiff growing out of the same transaction.

QUESTION NO. 8.

As to the date the transcript was ordered, the president of the plaintiff corporation testified in an affidavit in the record of this Case, 25917, and again in a separate pleading in Case 26026 as follows:

"On April 8, 1969, four days after the trial, I paid the plaintiff's half of the takedown costs and ORDERED THE TRANSCRIPT prepared for appeal."

This is plain, positive and direct. It is the type of testimony which is given preference in decisions of this Court and by Ga. Code Sec. 38-111.

Direct and positive testimony (such as that

of the plaintiff president) has been given preference to negative, self-contradictory, vague, evasive and equivocal testimony (such as that of the defendants) by Georgia Supreme Court in Southern Railway Co. v. Hobbs, 121 Ga. 428, 49 S.E. 294; and Steele v. Central of Ga. Ry. Co., 123 Ga. 237, 51 S.E. 438.

The same principles have been upheld by the Georgia Court of Appeals in Allison v. Cobb County, 98 Ga. App. 231, 103 S.E. 2nd 195; and Dowling v. Tracy, 116 Ga. App. 43, 156 S.E. 2nd 524.

The court reporter had opportunity in an affidavit and in oral testimony, both recorded in the transcript of the Motion to Dismiss the Appeal to refute and deny directly the aforesaid evidence, but he did not do so. He had opportunity to deny that he had reported the evidence missing for many months. He did not do so.

When examining counsel tried to get something definite on a date from the reporter the answer was:

"A. Probably some time in March. That is JUST A WILD GUESS."

It was on the testimony of a reporter who made WILD GUESSES as to dates that the Plaintiff has been denied a review of its cause when the crucial evidence was a matter of a date.

When questioned on the stand by counsel for the defendants as to who ordered the transcript, and when, the reporter replied:

"A. The best I remember it was Mr. Taylor, and again, the best I remember because I don't have any notes about any specific date, but July, August, or September of last year, 1969."

This was the vague and equivocal evidence which the trial court below, and the appellate court, accepted in preference to the direct and positive statement of the exact date as given by the president of the plaintiff corporation.

On this dubious evidence both courts have concluded that the plaintiff delayed its decision to order the transcript until August, 1969 and that this caused the delay in the appeal.

QUESTION NO. 9.

The trial court held and the appellate court in effect affirmed that only an abutting landowner had rights of ingress and egress that the courts can recognize and protect from obstructions in the street.

It has been held that land does not have to abut at the exact point of the obstruction: Tress v. Pivorotto 133 A 35, 101 Conn 389; Knothe v. Zinzer 115 A 477, 96 Conn 709; Brown v. Roberts 55 SW 2d 9, 246 Ky 316.

It has been held that a landowner may claim special damage from an obstruction even where his land does not abut on the highway, if it is near enough to be materially affected by the obstruction: Madden v. Pennsylvania R Co 21 Ohio Cir Ct. 73, 11 Ohio Cir Dec. 571.

This is precisely the case with Petitioner, whose land is 50 yards east of the obstruction but whose access is destroyed.

QUESTION NO. 10.

"There can be no equal justice when the kind of

trial a man gets depends on the amount of money he has": Smith v. Bennett 365 U.S. 708; 81 S. Ct. 895; 6 L ed 2d 39.

When the Defendants appeared to be influencing the trial court with their argument as to the millions of dollars the defendants had spent, Counsel for Petitioner raised the Constitutional question as shown in the record.

The Supreme Court of Georgia pointed out in support of its decision that during the delay 75 per cent of the construction was completed. The appellate court must have known that the defendants constructed the building at their peril.

The appellate court pointed out in support of its decision that the defendants expended a large financial outlay in constructing the building. We contend that no expenditure, no matter how large, can justify in law or equity the erection of an obstruction in the public streets.

QUESTION NO. 11.

The Defendants pleaded and the Supreme Court

of Georgia stated in support of its decision that the Defendants had expended millions on construction while the injunction proceedings were before the courts.

Petitioner contends that Defendants acted at their peril.

QUESTION NO. 12.

When a street is taken for a private purpose the Constitutional rights of those who use the street are invaded.

Recent decisions which the courts of many states have held that streets cannot be used for private purposes include the following: Cal.--People v. Goodspeed, Super., 192 P.2d 130, 85 Cal. App. 2d Supp. 821 People ex rel. Dept. of Public Works v. Russell, 309 P.2d 10, 48 C.2d 189. C.J.S. cited in Lewis v. Lorenz, 354 P.2d 1008, 1011, 144 Colo. 23. Antenucci v. Hartford Roman Catholic Diocesan Corp., 114 A.2d 216, 142 Conn. 349. Town of Ogden Dunes v. Wildermuth, App., 235 N.E. 2d 73. C.J.S. cited in State v. Hall, App., 351 S.W. 2d 460, 463. State

Dept. of Roads v. Merritt Bros. Sand & Gravel Co., 144 N.W. 2d 180, 180 Neb. 660. Lambe v. Reardon, 173 A.2d 520, 69 N.J. Super. 57. In re Appropriation for Highway Purposes, 215 N.E. 2d 612, 6 Ohio App. 2d 6--Miller v. Berryhill Nursery Co., 218 N.E. 2d 467, 7 Ohio App. 2d 30--In re Appropriation for Hwy. Purposes of Land of Winkelman, 234 N.E. 2d 514, 13 Ohio App.2d 125. William Lauback & Sons v. City of Easton, supra, n. 5. Wolfe v. City of Providence, 74 A. 2d 843, 77 R.I. 192. Abell v. Central Vt. Ry., Inc., 102 A. 2d 847, 118 Vt. 189. Anderson v. Stuarts Draft Water Co., 87 S.E. 2d 756, 197 Va. 36. State ex rel. York v. Board of Com'rs of Walla Walla County, 184 P.2d 577, 28 Wash. 2d 891, 162 A.L.R. 1001.

QUESTION NO. 13.

The trial court held and the appellate court in effect affirmed that only an abutting landowner or a municipality could enjoin the taking of a street for private purposes.

That there is no merit in this argument is

shown by citations elsewhere in this petition in which the courts have acted to protect the public interest.

QUESTION NO. 14.

Under the common law, an obstruction of a street or highway which constitutes a public nuisance is a crime, and may be punished as such:

Costello v. State 108 Ala 45, 18 So 820; State v. Knapp 6 Conn 415; Jacksonville T & K W R Co. v. Thompson 34 Fla 346, 16 So 282; Wragg v. Penn Two 94 111 11; State v. Southern Indiana Gas Co. 169 Ind 124, 81 NE 1149; Huffman V. State 21 Ind App 449, 52 NE 713; State v. Chicago M & St P R Co. 77 Iowa 442, 42 NW 365; Bembe v. Anne Arundel County 94 Md 321, 51 A 179; Commonwealth v. Surridge 265 Mass 425, 164 NE 480, 62 ALR 402, People v. Jackson 7 Mich 432; State v. Kean 69 NH 122, 45 A 256; Flynn v. Taylor 127 NY 596, 28 NE 418; Davis v. New York 14 NY 506; State v. Godwin 145 NC 461, 59 SE. 132; Green v. Thresher 235 Pa 169, 83 A 711; Commonwealth V. Allen 148 Pa 358, 23 A 1115; South Carolina S.B.

Co. v. Wilmington C & A R Co. 46 SC 327, 24 SE 337; State V. Wilkinson 2 Vt 480; State v. Burpee 65 Vt 1, 25 A 964; Teass v. St Albans 38 W Va 1, 17 SE 400; Ralston V. Weston 46 W Va 544, 33 SE 326.

The duty to remove an obstruction rests primarily upon the person or agency who is responsible for its existence. Weed v. Township Committee of Hillsdale 85 A 329.

QUESTION NO. 15.

The trial court held and the appellate court in effect affirmed that only an abutting landowner or the municipality could interfere with the relocation or private taking of a street.

The unreasonableness of this contention appears in the present cause where the newspaper company owns both sides of Fairlie Street NW and under the trial court's ruling it has only to obtain collusion of city officials before relocating or even taking for its own use the entire street.

The Defendants have reduced 50-foot-wide Wall Street NW to an alley, see photos, because they

have collusion of city officials and the opposite side of the street is owned by the Federal Reserve Bank, whose chairman at the time of encroachment was also president of the two defendant newspaper corporations.

In situations like this the courts are the only protection which the public has. The courts must intervene despite the decisions of the trial court and the appellate court that they cannot.

Fortunately for citizens of Atlanta the courts in the past have intervened as shown elsewhere in this petition and have preserved the public's rights in the streets.

CORPORATIONS ENJOY PROTECTION OF CONSTITUTIONAL PROVISIONS

The due process clause protects stockholders of a corporation, it has been held in Iowa-Illinois Gas & Elec. Co. v. City of Ft. Dodge 85 NW 2d 28; 248 Iowa 1201, which reads: "Freedom is invaded when property rights are ignored, and this is true when property confiscated is owned by stockholders through a corporation as well as when it is an

individual's home, his livestock, or the tools by which he earns his living; and thus it cannot be accurately said that the Constitution no longer protects property".

"Legislation must apply equally to all corporations in like circumstances", Knoxville & O. Ry Co. v. Harris 99 Tenn 684; 42 SW 115.

There is no doubt that a corporation may not be deprived of its property without due process of law. Smyth v. Ames 169 U.S. 466,522,526; Kentucky Co v. Paramount Exch 262 U.S. 544,550; Liggett Co. v. Baldridge 278 U.S. 105.

This Court has held that although a corporation is the creation of a State which reserves the power to amend or repeal corporate charters, the retention of such power will not support the taking of the corporate property without due process of law. Southwestern Tel. Co. v. Danaher 238 U.S. 482.

The equal protection clause applies to corporations. Santa Clara Co. v. Southern Pacific R.R. 118 U.S. 394.

CONCLUSION

Petitioner contends that the foregoing petition shows that it has been deprived of its property without due process of law and without equal protection of the law by the said decisions of the Georgia Supreme Court in violation of Section I of Amendment XIV of the U. S. Constitution in the many particulars specified, and that the federal constitutional questions raised are substantial and involve matters of grave public concern demanding the grant of the writ of certiorari by this honorable court.

WHEREFORE, Petitioner urges that it is entitled as a matter of absolute Constitutional right under the pertinent sections of the United States Constitution cited herein to the grant of the writ of certiorari to the Supreme Court of Georgia and reversal of its arbitrary, capricious and unconstitutional decisions denying it said constitutional rights.

Respectfully submitted,

G. Seals Aiken
Attorney for Petitioner
Suite 1409-10 Candler Building
Atlanta, Georgia 30303

ACKNOWLEDGMENT OF SERVICE

Service is hereby acknowledged and copy received of foregoing petition for certiorari.

This January _____, 1971.

Counsel for Cox Enterprises, Inc.
and Atlanta Newspapers, Inc.

21. Safety of Public----------16
18,20,21,23,39
22. Separation of Powers---------- 5
29,32
23. Taxing Power----------21
24. Title to Streets----------13
14
25. Vested Rights----------20
Corporations----------43
Petition for Certiorari---------- 1
Prayer----------45
Questions Presented for Review---------- 4
Statement of Case and Argument---------- 7
Statement of Grounds---------- 3

CASES CITED

Page
Abell v Central Vt Ry Inc 102 A 2d 847, 118 Vt 189----------40
Acme Realty Co v Schinasi 215 NY 495, 109 NE 577----------15
Aguiar & Bello v Brock 24 F Supp 692----------19
Anderson-Prichard Oil Corp v Corp Comm 342 US 938----------20
Allison v Cobb County 98 Ga App 231, 103 SE 2d 195----------35
Anderson v Stuarts Draft Water Co 87 SE 2 756, 197 Va 36----------40
Angel v Bullington 330 US 183----------29
Anger v Al G Barnes Amuse Co 183 Wis 272, 197 NW 707----------18
Antenicci v Hartford Rom Cath Dio Corp 114 A 2d 216, 142 Conn 349----------39
In ReAppro for Hghwy Purposes Land of Winkelman 234 NE 2d 514, 13 Ohio App 2d 125----------40
In re Appro. for Highway Purp 215 NE 2d 612, 6 Ohio App 2d 6----------40
Arbenz v Wheeling & H R Co 33 W Va 1, 10 SE 14----------16
Atchison T & S F Rv Co v Pub Util Comm

363 US 346, 98 L ed 51, 74 S Ct 92----------11
Bembe v Anne Arundel County 94 Md 321, 51 A 179----------41
Birmingham v Hood McPherson Rlty Co 233 Ala 352, 172 So 114, 108 ALR 1140----------16
Bouie v Columbia 387 US 347, 84 S Ct 1647, 12 L ed 2d 894----------30
Breisch v Locust Mtn Coal Co 267 Pa 546, 110 A 242, 9 ALR 1330----------17
Brooks v Henrietta Mills Co 182 NC 719, 110 SE 96----------16
Brown v Roberts 55 SW 2d 9, 246 Ky 316----------37
Cen of Ga Ry Co v Hartley 25 Ga App 120, 103 SE 262----------34
Chicago St M & O Ry v Holmberg 282 US 162----------22
City Council of Augusta v Reynolds 122 Ga 754, 50 SE 998, 106 Am St 147----------13
City of Shreveport v Kansas City S & G Ry Co 120 So 290, 167 La 711----------19
City of Sturgeon v Wabask Ry Co 17 SW 2d 616, 223 Mo App 633----------19
CLawson v Cent Hudson Gas & Elec Corp 298 NY 291, 83 NE 2d 124----------16
Coker et al v Atlanta K & M Ry Co 123 Ga 483, 51 SE 481----------10
Commonwealth v Allen 148 Pa 358, 23 A 1115----------41
Commonwealth v Surridge 265 Mass 425, 164 NE 480, 62 ALR 402----------41
Costello v State 108 Ala 45, 18 So 820----------41
Cowin v City of Waterloo 163 ALR 1327----------20
Daly v Ga S & F Ry Co 80 Ga 793, 7 SE 146----------17
Davis v New York 14 NY 506----------41
ex rel Dept Pub Wks v Russell 309 P 2d 10 48 C 2d 189----------39
Dowling v Tracy 116 Ga App 43, 156 SE 2d 524----------35
Dygert v Schenck 23 Wend NY 446,----------17
First Nat Bk v Tyson 133 Ala 459, 32 So 144----------17
Flynn v Taylor 127 NY 596, 28 NE 418----------41

Gidden v Lewis 137 Ga 22, 72 SE 412----------34
Graves v Shattuck 35 NH 257----------16
Gray v Gray 34 Ga 499----------33
Green v Thresher 135 Pa 169, 83 A 711----------41
Harbuch v Richland Box Co et al 204 Ga 352-------11
Hathorn v Natural Carbonic Gas Co 23
LRA ns 436, 12 Ann Cas 989----------20
Hertx Drivurself Stns v Siggins 58 A 2d
464, 359 Penn 25, 7 ALR 2d 707----------18
Higginbotham v Kearse 11 W Va 264, 161
SE 37, 77 ALR 1110----------17
Huffman v State 21 Ind App 449, 52 NE 713--------41
Indianapolis Life Ins Co v Lundquist 53
NE 2d 338, 222, Ind 359----------26
Iowa-Illinois Gas & Elec Co v City of
Ft Dodge 85 NW 2d 28 248 Iowa 1201----------43
Jacksoville T & K W R Co v Thompson
34 Fla 346; 16 So 282----------41
Kentucky Co v Paramount Exch 262 US 544, 550-----44
Knothe v Zihzer 115 A 477, 96 Conn 709----------37
Kesler v Dept Pub Safety 369 US 153----------23
Knoxville and O. Ry. Co v Harris
99 Tenn 684; 42 SW 115----------44
Lambe v Reardon 172 A 2d 520, 69 NJ Super
57----------40
Lewis v Lorenz 354 P 2d 1008, 1011,
144 Colo 23----------39
Lewis v Pingree Nat Bk 47 Utah 35, 151 P
558----------18
Liggett Co v Baldridge 278 US 105----------44
Loan Asso v Topeka 20 Wall 655----------21
Madden v Penn Ry Co 21 Ohio C Ct 73,
11 Ohio C Dec 571----------37
Marietta Chair Co v Henderson 121 Ga
399 407 SE 312, 104 Am St 156, 2 Ann
Cas 83----------12
McFarlane v Niagara Falls 247 NY 340,
160 NE 391, 57 ALR 1----------17
McGowan v Burns 172 Or 63, 137 P2d 994----------17
Memphis Street R Co v Rapid Transit Co
133 Tenn 99, 179 SW 635----------17
Michelson v Dwyer 158 Neb 427, 63 NW
2d 513----------16

Miller v Berryhill Nursery Co 218 NE 2d 467, 7 Ohio App, 2d 30----------40
Millheim v Moffat Tunnel Dist 262 US 710---------21
Moody & Wife v Davis 10 Ga 410----------30
Norfolk Turnpike Co v Virginia 225 US 264--------22
No Car v Pearce 395 US 711, 89 S Ct 2072, 23 L ed 2d 656----------27
O'Brien v Central Iron & Steel Co 158 Ind 218, 63 NE 302----------17
O'Hanlin v Carter Oil Co 54 W Va 510, 46 SE 656----------15
Opdycke v Pub Ser R Co 78 NJL 576, 76 A 1032----------16
Overhouser v Am er Cereal Co 92 NW 74, 118 Iowa 417----------21
People v Goodspeed 192 P 2d 130, 85 Cal App 2d Supp 821----------39
People v Jackson 7 Mich 432----------41
People ex rel McCormick v Western Cold Sto Co 123 NE 43, 11 ALR 437----------17
Price v Travis 149 Ba 536, 140 SE 644, 77 ALR 1110----------17
Railway Exp Co v New York 336 US 106----------22
Ralston v Weston 46 W Va 544, 33 SE 326----------42
Reduction Co v Sanitary Wks 199 US 306, 318------23
Reitz v Mealey 314 US 33----------23
Richardson v Boston 19 How (US) 263, 16 L ed 639----------16
Rider v Porter 147 Ga 760, 95 SE 284----------12
Rinaldi v Yeager 384 US 305, 86 S Ct 1497 16L ed 2d 577----------27
Santa Clara Co v Southern Pacific RR 118 US 394----------44
Silverman v Usen 128 Me 349, 147 A 421----------15
Smith v Bennett 365 US 708, 81 S Ct 895, 6 L ed 2d 39----------38
Smyth v Ames 169 US 466, 522, 526----------44
So Car v Katzenbach 383 US 301, 86 S Ct 803, 15 L ed 2d 769----------32
South Carolina S B Co v Wilmington C A R Co 46 SC 327, 24 SE 337----------41
So Ry Co v Hobbs 121 Ga 428, 49 Se 294----------35
Southwestern Tel Co v Danaher 238 US 482---------44

Sproles v Binford 286 US 374----------22
Standard Oil Co v Commonwealth 109 SE 316, 131 Va 830----------21
State v Burpee 65 Vt L 25 A 964----------42
State v Chicago M & St P R Co 77 Iowa 442 42 NW 365----------41
State v Hall 351 SW 2d 460, 463----------39
State v Godwin 145 NC 461, 59 SE 132----------41
State v Kean 69 NH 122, 45 A 256----------41
State v Knapp 6 Conn 415----------41
State v New Eng Furn. Co 52 LRA ns 932----------20
State v So Ind Gas Co 169 Ind 124, 81 NE 1149----------41
State v Wilkinson 2 Vt 80----------42
State ex rel York v Bd of Comm Walla Walla County 184 P 2d 577, 28 Wash 2d 891 162 ALR 1001----------40
State Dept Roads v Merritt Bro Sand & Gravel Co 144 NW 2d 180, 180 Neb 660----------39
Steele v Cen of Ga Ry Co 123 Ga 237, 51 SE 438----------35
Stern v Int, R Co 220 NY 284, 115 NE 759, 2 ALR 487----------16
Stillwater v Lovell 159 Okla 214, 15 P 2d 12----------15
Strong v Sullivan 180 Cal 331, 181 P 59, 4 ALR 343----------16
Teass v St Albans 38 W Va 1, 17SE 400----------42
Town of Ogden Dunes v Wildermuth 235 NE 2d 73----------39
Tress v Pivorotto 133 A 135, 101 Conn 389--------37
Valparaiso v Bozarth 153 Ind 536, 28 NE 418------17
Weed v Township Committee of Hillsdale 85 A 329----------42
William v Oklahoma City 395 US 458, 89 S Ct 1818, 23 L ed 2d 440----------27
Wm Lauback & Sons v City of Easton supra n. 5----------40
Wolfe v City of Providence 74 A 2d 843, 77 R 1 192----------40
Wragg v Penn Tw 94 Illinois----------41
Young v Mall Inv Co 55 ALR 461----------20